is at the very time of his injury performing a duty in furtherance of interstate commerce; that any other interpretation of the language of the amendment of August 11, 1939 would result in such amendment being "beyond the powers of Congress" (R. 55-61).

JURISDICTIONAL STATEMENT.

This court has jurisdiction by reason of Section 344(b), Title 28, U. S. Code, permitting certiorari in cases where a final judgment or decree has been rendered by the highest court in the State in which a decision could be had, and where there is drawn in question the validity of a statute of the United States.

The judgment herein involved has been rendered by the highest court of Illinois, the Supreme Court of the State. The statute, the validity of which has been called in question, is the August 11, 1939 amendment to 53 Stat. L. 1404; Section 51, U. S. Code, Title 45 (Federal Employers' Liability Act). This amendment is as follows:

> "Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this Act, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this Act and of an Act entitled 'An Act relating to the liability of common carriers by railroad to their employees in certain cases' (approved April 22, 1908), as the same has been or may hereafter be amended."

This court also has jurisdiction by reason of the fact that by the judgment of the Supreme Court of Illinois petitioner has been denied the right to have his liability, if any, determined by the provisions of the Federal Employers' Lia-

bility Act as amended. Cases believed to sustain jurisdiction on this ground are *Straus* v. *Am. Publishers' Ass'n.*, 231 U. S. 222, 233 and *Southern Ry. Co.* v. *Crockett*, 234 U. S. 725, 730.

The opinion of the Supreme Court of Illinois was filed on September 25, 1942 (R. 55) and judgment entered in that court (R. 62). The opinion is reported in Volume 380 of the Illinois Supreme Court Reports at page 386. The opinion and judgment appear at pages 55 to 62, inclusive, of the transcript of record. By this judgment, the judgment of the Circuit Court of Cook County, confirming the decision of the Industrial Commission, is affirmed, and the case is held to be one under the Workmen's Compensation Act and not under the Federal Employers' Liability Act.

When respondent's application for adjustment of claim was first filed with the Industrial Commission, petitioner herein objected to its allowance on the ground that the Workmen's Compensation Act was not applicable (R. 2), and throughout the proceedings in the courts below petitioner contended that the Federal Act was applicable (R. 3, 17, 30). However, the arbitrator, the Industrial Commission, the Circuit Court of Cook County, and the Supreme Court of Illinois, all held adversely to petitioner's contention (R. 27, 30, 61).

THE QUESTIONS PRESENTED.

1. Is the August 11, 1939 amendment to U. S. Code, Title 45, Section 51, beyond the power of Congress?

2. Was respondent at the time of his injuries under and subject to the provisions of the Federal Employers' Liability Act? If he was, then the Illinois Workmen's Compensation Act was not applicable and the Industrial Commission had no jurisdiction to entertain the application for adjustment of the claim and the award of compensation was improper.

STATUTES INVOLVED.

The case arises under the Federal Employers' Liability Act (U. S. Code, Title 45, Sections 51, et seq.).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Supreme Court of Illinois has decided a Federal question of substance not heretofore determined by this court. (U. S. Supreme Court Rule 38, 5(a)).

2. The Supreme Court of Illinois has decided a Federal question of substance in a way probably not in accord with applicable decisions of this Court (U. S. Supreme Court Rule 38, 5(a)).

3. The scope and validity of the amendment of August 11, 1939, have been passed upon by other state courts of last resort, each to the contrary of the decision of the Illinois Supreme Court. The facts in the instant case bring it squarely within the provisions of the amendment. The Illinois court holds that to that extent the amendment is unconstitutional.

WHEREFORE, petitioner prays that a writ of certiorari be issued by this court directed to the Supreme Court of Illinois commanding that court to certify and send to this court a transcript of its record and proceedings, and that the judgment of said Supreme Court of Illinois may be reviewed and reversed by this Honorable Court, and that petitioner may have such other and further relief as is proper.

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Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

The opinion of the Supreme Court of Illinois appears in Volume 380 at page 386 of the official reports of the Supreme Court of Illinois (44 N. E. (2d) 19).

The jurisdictional grounds upon which review of this case is sought are set forth on pages 3 and 4 of the foregoing petition, and are herein incorporated by reference.

STATEMENT OF THE CASE.

Petitioner is now, and at the time of the accident involved herein was, the Trustee of the property of the Chicago and North Western Railway Company and in such capacity at all times engaged in both interstate and intrastate commerce. In November 1933 respondent entered the service of the Chicago and North Western Railway Company as a patrolman and, with the exception of a short layoff, continued to work for that company, or its trustee, until he was injured on March 11, 1940. His duties were to be performed in various yards of petitioner and required him to look over inbound and outbound interstate and local trains in these yards, patrol his territory, watch for, extinguish and report fires, keep trespassers off, try to apprehend and arrest thieves, watch tracks for obstructions and broken rails, and determine whether cars were sealed (R. 8). If he should find a car (interstate or intrastate) broken open it was his duty to examine the contents to learn whether or not pilferage had occurred, make notations thereof, reseal the car and make a report to his superior officers (R. 9, 27, 28). It was also his duty to inspect passing trains (interstate and intrastate) for hot boxes and other damage. The yards where respondent's duties were performed were for both interstate and intrastate transportation.

On the night of March 11, 1940, respondent was assigned to work in the North Avenue district in Chicago, extending from Clybourn Avenue on the north to Division Street on the south (R. 5, 8). Both main line interstate and side tracks are located in this district (R. 8, 9). Petitioner's railway system extends into and through nine states, namely, Illinois, Iowa, Nebraska, Wyoming, South Dakota, North Dakota, Wisconsin, Michigan and Minnesota (R. 29).

Respondent reported for duty at the North Avenue Yard office at about 5:20 P.M. on the evening of March 11, 1940. A few minutes before 6:00 P.M. respondent left the yard office and started toward Division Street in performance of his regular duties (R. 6). On his way respondent stopped and examined a section shanty, and then proceeded down petitioner's track number 6. In the course of his duties respondent came to a bridge on petitioner's right of way and saw a stranger standing nearby. Respondent, announcing himself to be a police officer, approached this man to ascertain what he was doing on railroad property (R. 6). Thereupon the man tried to strike respondent with a stick or club (R. 7). Respondent disarmed the man and placed him under arrest (R. 7). Shortly thereafter two other men came up on the right of way and grabbed respondent, held his arms and beat him, and finally pushed him off the bridge causing him to fall about twenty feet (R. 7). Respondent was injured by the fall, and because of such injuries filed his claim for compensation (R. 8).

There is no dispute as to the above facts or as to the nature and extent of the injuries.

Hearings on respondent's application for adjustment of claim were had and an award was entered finding that both petitioner and respondent were subject to the terms of the Illinois Workmen's Compensation Act; that the injury arose out of and in the course of his employment; and that

the injury was compensable under that act (R. 30, 57). On certiorari, the Circuit Court of Cook County affirmed the decision of the Industrial Commission (R. 30, 57). The sole question is whether respondent at the time of his injuries was under and subject to the provisions of the Federal Employers' Liability Act. If he was, then the Illinois Workmen's Compensation Act was not applicable, and the Industrial Commission had no jurisdiction to entertain the application for adjustment of the claim and the award of compensation was improper.

ASSIGNMENT OF ERRORS.

1. The Supreme Court of Illinois erred in holding that the August 11, 1939 amendment to Section 51 of the Federal Employers' Liability Act was unconstitutional.

2. The Supreme Court of Illinois erred in holding that respondent at the time of his injuries was not under the Federal Employers' Liability Act

SUMMARY OF ARGUMENT.

I.

Congress may regulate the liability of a carrier for injuries suffered by an employee whose duties are in both interstate and intrastate commerce, regardless of the character of work being performed at the time of accident.

Ill. Cent. R. Co. v. *Behrens*, 233 U. S. 473;
Southern Ry. v. *United States*, 222 U. S. 20;
B. & O. RR. v. *Int. Com. Com.*, 221 U. S. 612;
Texas & Pacific Ry. v. *Rigsby*, 241 U. S. 33;
National Labor Relations Board v. *Fainblatt*, 306 U. S. 601;
Kirschbaum v. *Walling*, 316 U. S. 517;
U. S. v. *Wrightwood Dairy Co.*, 315 U. S. 110;
Wickard v. *Filburn*, ... U. S. .... 87 L. Ed. (adv. opin.) 57;
Second Employers Liability Cases, 223 U. S. 1.

II.

The courts should not by a strained construction override the clear intent of a statute, but should rather decide questions in accordance with the views expressed by Congress.

Title 45, U.S.C.A., Sec. 51.

Senate Committee on Judiciary Report — 76th Congress.

III.

To sustain the purpose of the 1939 amendment, no previous decision of this court will have to be overruled.

Howard v. *Ill. Cent. R. Co.*, 207 U. S. 463;

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1;

Ill. Cent. R. Co. v. *Behrens*, 233 U. S. 473;

Graves v. *New York ex rel. O'Keefe*, 306 U. S. 466.

IV.

The 1939 amendment is clearly applicable to the case at bar.

Kinzell v. *C. M. & St. P. Ry. Co.*, 250 U. S. 130;

Pecos & Northern Ry. Co. v. *Rosenbloom*, 240 U. S. 439;

Missouri Pacific R. R. v. *David*, 284 U. S. 460;

Philadelphia & Reading R. Co. v. *DiDonato*, 256 U. S. 327;

Wheelock v. *Industrial Com.*, 318 Ill. 537.

V.

All other decisions on the subject since the 1939 amendment have given effect to its obvious purpose. To secure uniform application of the act this court should pass on this case.

Southern Pacific v. *Industrial Acc. Com.*, 120 Pac. (2d) 880 (Cal.);
Louisville & Nashville R. R. Co. v. *Plotts*, 158 S. W. (2d) 729 (Tenn.);
Piggue v. *Baldwin*, 121 Pac. (2d) 183 (Kan.);
Ermin v. *Pa. R. R. Co.*, 36 Fed. Supp. 936;
Wright v. *New York Central R. R. Co.*, 33 N. Y. Supp. (2d) 531;
N. Y. C. R. R. v. *Winfield*, 244 U. S. 147.

VI.

Even without the 1939 amendment respondent was governed by the Federal Employers' Liability Act.

Roberts Federal Liabilities of Carriers, Sec. 754;
Erie v. *Winfield*, 244 U. S. 170;
Erie v. *Welsh*, 242 U. S. 303,
Nor. Car. R. R. Co. v. *Zachary*, 232 U. S. 248;
N. Y. C. R. R. Co. v. *Marcone*, 281 U. S. 345, 350;
Rader v. *B. & O. R. Co.*, 108 F. (2d) 980;
MacLemale v. *N. Y. C. R. R. Co.*, 300 N. Y. S. 68;
Cullen v. *Erie R. Co.*, 267 N. Y. S. 837;
Elder v. *Penn. R. Co.*, 180 Atl. 183 (Pa. Supr.);
Nichols v. *St. L. & S. F. R. Co.*, 151 So. 347 (Ala.);
Bordelon v. *New Orleans Term.*, 129 So. 452 (La.);
Cork v. *Lehigh Valley R. Co.*, 119 Atl. 88 (N. J.);
Fitzgerald v. *Gt. Northern Ry. Co.*, 196 N. W. 657 (Minn.);
A. T. & S. F. Ry. Co. v. *Ind. Acc. Comm.*, 220 Pac. 342 (Cal.);

Smith v. *Ind. Acc. Com.*, 147 Pac. 600 (Cal. A.);
Dade v. *N. Y. C. R. Co.*, 206 N. Y. S. 519;
Anest v. *Columbia & P. S. Co.*, 154 Pac. 1100 (Wash.);
Mulcahy v. *Terminal R. R.*, 123 S. W. (2d) 235 (Mo.);
Jordan v. *Erie R. R.*, Atl. (2d) 116 (Pa. Supr.);
Jennings v. *Pittsburgh & L. E. R. Co.*, 7 Atl. (2d) 96 (Pa. Supr.).

ARGUMENT.

I.

Congress may regulate the liability of a carrier for injuries suffered by an employee whose duties are in both interstate and intrastate commerce, regardless of the character of work being performed at the time of accident.

The decision of the Supreme Court of Illinois is based on the proposition that Congress acted beyond its powers in passing the August 11, 1939, amendment to Section 51, Title 45, U. S. Code, when it extended the Federal Employers' Liability Act to include employees of an interstate carrier where the duties of the employees were both interstate and intrastate, but where the act which was performed at the time of the accident was intrastate. In other words, the Supreme Court of Illinois has said in effect that the power of Congress over commerce so far as an employee is concerned is constitutionally limited to instances where the employee at the time of accident is doing interstate work; that it makes no difference that an injury to an employee may prevent him in the next moment from performing a duty vital to interstate commerce; and that such inability of the employee to perform an act of interstate commerce does not affect interstate commerce.

There is no restriction on the power of Congress over interstate commerce, and in numerous cases decided by this court it has been held that Congress has the power to regulate intrastate commerce which affects interstate commerce. We cite only a few of the many cases establishing this principle.

In *Ill. Cent. R. Co.* v. *Behrens*, 233 U. S. 473, it was held that an employee of an interstate carrier engaged at the time of injury in moving cars solely in intrastate commerce was not engaged in interstate commerce within the meaning of the Employers' Liability Act of 1908. This court

was careful to point out, however, that had Congress so desired it could have extended the application of the Federal Employers' Liability Act to employees who were engaged in part in interstate commerce whether the particular service being performed at the time of the injury, isolatedly considered, was in interstate or intrastate commerce. The court said at page 477:

> "Considering the status of the railroad as a highway for both interstate and intrastate commerce, the interdependence of the two classes of traffic in point of movement and safety, the practical difficulty in separating or dividing the general work of the switching crew, and the nature and extent of the power confided to Congress by the commerce clause of the Constitution, we entertain no doubt that the liability of the carrier for injuries suffered by a member of the crew in the course of its general work was subject to regulation of Congress, whether the particular service being performed at the time of the injury, isolatedly considered, was in interstate or intrastate commerce."

Southern Ry. v. *United States*, 222 U. S. 20, involved a civil action to recover penalties for violation of the Safety Appliance Act. The defendant railroad had hauled five cars with defective couplers. Two of the cars were used at the time in moving interstate traffic and the other three were in intrastate traffic. It did not appear that the use of these three cars was in connection with the two cars in interstate commerce. The defendant contended that the Act was not intended to apply to purely intrastate hauling, although on a railroad which was engaging in interstate commerce. Defendant also contended that if the intent of the act was to apply to cars purely in intrastate commerce, the act would be unconstitutional. This court held that both of defendant's contentions were without merit, and that where both intrastate and interstate transportation are carried